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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,169	09/03/2003	Volker Kuhl	BATG-9	4347
27868	7590	06/12/2006	EXAMINER	
JOHN F. SALAZAR MIDDLETON & REUTLINGER 2500 BROWN & WILLIAMSON TOWER LOUISVILLE, KY 40202			MAYES, DIONNE WALLS	
			ART UNIT	PAPER NUMBER
			1731	

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/654,169

Applicant(s)

KUHL ET AL.

Examiner

Dionne Walls Mayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,15-19,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14,20,24-28 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of Species C, claims 10-14, 31-33, as well as generic claims 1-6, 9,20, and 24-28 in the reply filed on March 28, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 7-8, 15-19 and 29-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 9-14, 20, 24-26, 28 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akutsu (US. Pat. No. 4,661,985).

Akutsu discloses nearly all that is recited in the claims since it teaches an apparatus (and method performed thereby) for separating tobacco lamina from ribs (i.e. winnowings) so that the tobacco lamina can be used in the making of cigarettes. The apparatus comprises means for measuring the lamina-yielding ratio in the tobacco raw material treatment flow in which the tobacco leaves are stripped into lamina and ribs.

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Mechanical impact (i.e. impact sheet), which is continually adjusted, is imparted to the tobacco leaves to separate same, and arithmetic operation means, into which a measurement signal from the measuring means is applied, as a feedback signal, for searching a rotational number of the rotary rib removing machine, provides an optimum lamina size. The mechanical impact force in the rib-removing machine (i.e. detaching lamina from ribs) is automatically controlled in response to the result of treatment of the raw material tobacco leaves to provide an optimum lamina size. (See col. 1, line 57-col. 2, line 8). This disclosure obviously suggests the instant recitation regarding comparing settable nominal lamina size distribution to an actual (current) lamina size distribution, as such disclosure indicates that the optimum lamina size is a result of a comparator determining a measured lamina value with that which is a desired/optimal lamina size.

Regarding claims 11-14, while Akutsu may not specifically state that its impact sheet is metal, and is adjusted by a servo/step motor attached to the impact metal sheet via Bowden wire connections – defined by springs – absent evidence of criticality or unexpected result, by Applicant, the Examiner does not deem these limitations to be patentably distinguishable from the reference as one having ordinary skill in the art would have opted to have provided these in the apparatus/method of Akutsu, since they are well-known in the tobacco and electrical arts.

5. Claims 5-6 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akutsu (US. Pat. No. 4,661,985) in view of Applicant Admitted Art.

While Akutsu may not specifically state that the dimensions of the tobacco particles are detected using a fine-beam light barrier, this would have been an obvious

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instrument in which to determine the tobacco particle dimensions of Akutsu since Applicant has admitted that such light-beams are well-known in the art as evidenced by the DE 19948559 reference.

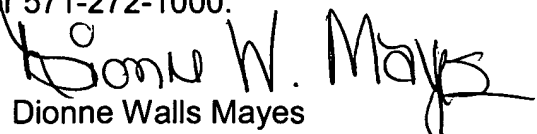
**Conclusion**

- Ulrich et al (US. Pat. No. 6,542,234)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Dionne Walls Mayes

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Primary Examiner  
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June 8, 2006